STATE OF MICHIGAN

COURT OF APPEALS

KIMBERLY WISE,

Petitioner-Appellee,

v

MICHIGAN CIVIL SERVICE COMMISSION,

Respondent-Appellant.

UNPUBLISHED
August 23, 2007

No. 268675
Wayne Circuit Court
LC No. 05-524180-AE

Before: Davis, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Respondent appeals by leave granted from a circuit court order reversing respondent's decision and reinstating petitioner's employment with the Michigan Department of Corrections. We reverse.

Petitioner was employed as a resident unit officer by the Michigan Department of Corrections ("MDOC") as a resident unit officer, which is a classified civil service position governed by the civil service rules and regulations promulgated by respondent. She was also a member of the Michigan Corrections Organization, Service Employees International Union ("MCO"), the labor relations representative for corrections workers in Michigan. The MCO entered into a collective bargaining agreement with the MDOC. In 2003, the MDOC discovered evidence of improper contact between petitioner and a prisoner who had recently been transferred from the facility where petitioner worked to another facility. Petitioner denied, and continues to deny, any of the contacts. The MDOC held a disciplinary conference and found that petitioner had violated its Work Rule 46, prohibiting "over familiar" conduct with a prisoner. In December 2003, the MDOC formally terminated petitioner's employment.

Pursuant to Article 9 of the collective bargaining agreement, the MCO filed a grievance on petitioner's behalf. The grievance proceeded to arbitration, where the MCO argued that the evidence of misconduct was unreliable, that termination was excessively harsh and based on a failure to consider mitigating factors, and that no punishment could be imposed because the MDOC had failed to use the required manner of providing her with notice. The arbitrator found the evidence reliable and that consideration of the mitigating and aggravating factors supported termination. Article 10(E) of the collective bargaining agreement required disciplinary actions to "be initiated within forty-five (45) calendar days from the date of the disciplinary conference;" specified that "[f]ormal notification to the employee of the disciplinary action shall be in the form of a letter or form spelling out charges and reasonable specifications;" and specified that if

notice was not personally given to the employee, "the notice shall be sent to the employee by certified mail, return receipt requested, at the last address he/she provided the Employer." The arbitrator found that, although the MDOC had sent notice to petitioner using only noncertified overnight mail, the agreement should not be construed to cause a forfeiture of the MDOC's right to impose discipline; and it should not be construed to reach harsh, unreasonable, or absurd results. The arbitrator therefore upheld the termination. The MCO did not seek further administrative or judicial relief.

Petitioner then exercised her rights under Civil Service Rule ("CSR") 6-3.5(a), which permits "[a]ny person" to "file a complaint with the state personnel director that a collective bargaining agreement, arbitrator's decision, or settlement agreement under a collective bargaining agreement has been applied or interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining." The prohibited subjects of bargaining are listed in CSR 6-3.2, which also provides that an "arbitrator's decision under a collective bargaining agreement cannot be interpreted or applied to violate, rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining." CSR 6-3.2(a)(1). Petitioner specifically contended that the arbitrator had violated CSR 6-3.2(b)(8), which provides as follows:

> The system of collective bargaining created in the civil service rules, the bargaining relationships authorized in the rules, and the limitations, restrictions, and obligations on the collective bargaining parties, collective bargaining agreements, and eligible employees established in the civil service rules and regulations.

Petitioner argued that the arbitrator had exceeded his authority by ignoring or misconstruing the unambiguous terms of the collective bargaining agreement; and furthermore, the arbitrator improperly relied on unreliable, circumstantial, or nonexistent evidence. The state personnel director denied the appeal for lack of subject-matter jurisdiction. The state personnel director explained that a complaint under CSR 6-3.5(a) required an allegation that a *civil service rule or regulation* was violated, but petitioner's complaint alleged only a violation of the collective bargaining agreement.

Petitioner then sought to appeal the personnel director's decision to respondent, pursuant to CSR 6-3.5(c), which provides as follows:

> A party to the collective bargaining agreement who is aggrieved by a final decision of the state personnel director may file an application for leave to appeal to the civil service commission within 28 calendar days after the decision is issued.

Respondent dismissed the appeal, stating that CSR 6-3.5(c) only permitted parties to the collective bargaining agreement to seek appeals from decisions of the state personnel director. Respondent interpreted "parties" to refer only to the union and the employer, in this case the MCO and the MDOC. According to respondent, individual union members like petitioner were not "parties to the collective bargaining agreement." Therefore, respondent concluded that petitioner lacked standing to appeal.

Petitioner appealed respondent's summary dismissal to the circuit court. The circuit court concluded that respondent had misinterpreted the civil service rules when it determined that an individual union member is not a "party" to the collective bargaining agreement within the meaning of CSR 6-3.5(c). Relying on MCL 600.1405, the court determined that union members are third-party beneficiaries to a collective bargaining agreement for purposes of applying CSR 6-3.5(c). The circuit court also addressed the merits of petitioner's claim and concluded that she was improperly terminated from her employment. The circuit court ordered that she be reinstated. Respondent now appeals.

Respondent is a constitutionally created administrative agency vested with the authority to "make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service." Const 1963, art 11, § 5; *Davis v Dep't of Corrections*, 251 Mich App 372, 377; 651 NW2d 486 (2002). Respondent "is vested with plenary and absolute authority to regulate the terms and conditions of employment in the civil service." *Id.* Consistent with respondent's plenary authority, the Michigan Constitution provides that the Legislature "may enact laws providing for the resolution of disputes concerning public employees, *except those in the state classified civil service*." Const 1963, art 4, § 48 (emphasis added). As discussed, petitioner was in the state classified civil service. She is therefore "subject to the grievance procedure for the classified service." *Womack Scott v Dep't of Corrections*, 246 Mich App 70, 78; 630 NW2d 650 (2001). "If a party desires to challenge an adverse CSC decision or ruling, the review process involves a direct appeal to the circuit court." *Id*., 79.

"Judicial review of decisions of the Civil Service Commission is established by the Revised Judicature Act," MCL 600.631. *Boyd v Civil Service Comm*, 220 Mich App 226, 232; 559 NW2d 342 (1996). The circuit court conducts a "direct review" to determine whether the CSC's challenged action was authorized by law and was supported by competent, material, and substantial evidence. *Id.* Our review of the circuit court's review of an agency action is even more limited: we only "determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings." *Id.*, 234. This standard is substantively indistinguishable from the clear error standard of review. *Id.* at 234-235. A finding is clearly erroneous when, on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made. *Id.* at 235.

The challenged agency action is the summary dismissal of petitioner's application for leave to appeal for lack of standing. The threshhold issue on appeal is therefore whether petitioner is a "party to the collective bargaining agreement" and therefore entitled to appeal the state personnel director's decision pursuant to CSR 6-3.5(c). The civil service rules provide no other recourse for appealing a denial of a complaint by the state personnel director.

We first find that petitioner is not a party to the collective bargaining agreement. The collective bargaining agreement was made between the MCO and the MDOC. *Barron's Law Dictionary* (1984) defines "party" as "a person or entity that enters into a contract, lease, deed, etc." Black's Law Dictionary (8th ed) defines "party" as "[o]ne who takes part in a transaction <a party to the contract>." *Random House Webster's College Dictionary* (2001) defines "party" in relevant part as "a person or group that participates in some action, affair, or plan" or as "a signatory to a legal instrument." Petitioner did not negotiate, sign, or otherwise personally enter

into the collective bargaining agreement. She is therefore not a "party" to it. See also, *Markarian v Roadway Express, Inc*, 56 Mich App 43, 44; 223 NW2d 356 (1974) (holding that the plaintiff-employee was "not per se a party" to the collective bargaining agreement between his employer and his union, although he might have an independent action against his employer).

A reviewing court should give deference to an agency's interpretation of its own rules. *Thomas Twp v John Sexton Corp of Michigan*, 173 Mich App 507, 514; 434 NW2d 644 (1988). An agency's legal rulings also are entitled to "deference, provided they are consistent with the purpose and policies of the statute in question." *Adrian School Dist v Michigan Pub School Employees' Retirement Sys*, 458 Mich 326, 332; 582 NW2d 767 (1998). They will be set aside only "if they violate the constitution or a statute or contain a substantial and material error of law." *Id.* It appears that respondent's interpretation of the definition of a "party to the collective bargaining agreement" in this case is consistent with the plain language of CSR 6-3.5(c). If respondent had intended to allow individual union members the right to appeal the personnel director's decision to the commission pursuant to CSR 6-3.5(c), it easily could have used language clearly expressing that intent. For example, CSR 6-3.5(a) provides that "any person" may file a complaint with the state personnel director.

Under Article 9(D) of the collective bargaining agreement, "[e]xcept as provided in Civil Service Rules and Regulations, the decision of the Arbitrator will be final and binding on all parties to this Agreement and an Arbitration decision shall not be appealable to the Civil Service Commission." Petitioner's rights to appeal an arbitration decision under the collective bargaining agreement are therefore *only* those rights provided by the Civil Service Rules. Significantly, CSR 6-3.5 itself does not pertain to enforcement of the collective bargaining agreement in the abstract. Rather, CSR 6-3.5 is concerned with a violation of "a civil service rule or regulation governing a prohibited subject of bargaining."

Plaintiff argues that even if she is not a party to the collective bargaining agreement, she is a third-party beneficiary. The only right conferred on a third-party beneficiary under MCL 600.1405 is the right to enforce the *contract* as if he or she is a true party. Nothing in the statute suggests that a third-party beneficiary has the additional right to act as a party for the purposes of standing to enforce anything other than actual promises contained within the contract itself. We may not read into a statute anything "that is not within the manifest intent of the Legislature as gathered from the act itself." *Maier v Gen Tel Co of Michigan*, 247 Mich App 655, 662; 637 NW2d 263 (2001). Therefore, MCL 600.1405 does not affect petitioner's standing to enforce a civil service rule violation pursuant to CSR 6-3.5(c).

Because petitioner was not a party to the collective bargaining agreement, respondent properly concluded that she lacked standing to invoke the appeal procedure in CSR 6.3-5(c), and the circuit court erred in reversing respondent's dismissal of petitioner's appeal of the personnel director's decision. Accordingly, we reverse the circuit court's judgment and reinstate respondent's decision.

Reversed.

/s/ Alton T. Davis
/s/ Bill Schuette
/s/ Stephen L. Borrello